

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	:	Chapter 11
	:	
ATHENEX, INC., et al.,	:	Case No. 23-90295 (DRJ)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
	:	(D.E. No.: 141)

**OBJECTION OF GENSCRIPT PROBIO USA, INC. TO DEBTORS' NOTICE
OF EXECUTORY CONTRACTS THAT MAY BE ASSUMED AND ASSIGNED
PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE, IN
CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE
DEBTORS' ASSETS, AND THE PROPOSED CURE AMOUNTS WITH
RESPECT THERETO**

The objection of GenScript Probio USA, Inc. ("GenScript") to the Debtors' Notice of Executory Contracts that May Be Assumed and Assigned Pursuant to Section 365 of the Bankruptcy Code, in Connection With the Sale of Substantially All of the Debtors' Assets, and the Proposed Cure Amounts With Respect Thereto, submitted by and through its undersigned counsel, respectfully represents the following:

1. On May 14, 2023 (the "Petition Date"), the above-captioned Debtors each filed voluntary petitions under Chapter 11 Title 11 of the United States Code (the "Bankruptcy Code").
2. GenScript and affiliates are leading technology and service providers of life science research and development and manufacturers. Built upon gene synthesis technology, GenScript is divided into four major platforms including the life science service and product platform, the

¹ A complete list of each of the Debtors in these Chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://dm.epiq11.com/athenex>. The location of Athenex's principal place of business and the Debtor's service address in these Chapter 11 Cases is 1001 Main Street, Suite 600, Buffalo, NY 14203.

biologics contract development and manufacturing organization (CDMO) platform, the industrial synthetic products platform, and the integrated global cell therapy platform.

3. GenScript offers comprehensive life sciences research services and products including custom gene synthesis and molecular biology, custom protein expression and purification, custom peptide synthesis, antibody production, and custom cell line development, catalog antibodies, catalog kits and eStain and eBlot. In addition, GenScript provides preclinical drug development services, including in vitro pharmacology, in vivo pharmacology, and antibody/protein engineering services. GenScript's business operations span over 100 countries and regions worldwide.

4. GenScript is party to a Master Services Agreement (the "Master Services Agreement") with an effective date of April 28, 2022 executed by and between GenScript and the Debtor, Athenex, Inc. The Master Services Agreement encompasses services such as strategic planning, statistical programming and analysis, data processing, project management, preclinical services, pharmaceutical science services, contract development and manufacturing and other research and development services as requested from time to time by the Debtor, Athenex, Inc., and as agreed to by GenScript as more fully set forth in relevant work orders issued within the scope of the Master Services Agreement.

5. Debtors have served a Notice of Executory Contracts that May Be Assumed and Assigned Pursuant to Section 365 of the Bankruptcy Code, in Connection With the Sale of Substantially All of the Debtors' Assets, and the Proposed Cure Amounts With Respect Thereto (Doc. 141) (the "Cure Notice"), dated May 26, 2023.

6. The Cure Notice identifies: (i) those executory contracts and unexpired leases that may be assumed and assigned to the Prevailing Purchaser² in connection with the Sale of the Assets (the “Designated Contracts”); and (ii) the proposed cure amount to cure any and all defaults associated with each Executory Contract set forth in the Cure Notice.

7. The Cure Notice provides that objections to the proposed cure amount shall be stated with specificity.

OBJECTION

8. Exhibit A (line 45) to the Cure Notice sets forth a proposed cure amount for GenScript in the amount of \$256,670.00 (the “Cure Amount”).

9. GenScript objects to Debtors’ Cure Amount since said amount does not accurately reflect the full amount due and owing to GenScript pursuant to Master Services Agreement.

10. GenScript asserts that the correct cure amount for all amounts due and owing under the Master Services Agreement is \$1,431,638.87 (the “GenScript Cure Amount”), which GenScript Cure Amount includes all unpaid fees for project services. Attached hereto as **Exhibit “A”** is GenScript’s calculation of the GenScript Cure Amount which is due and owing under the Master Services Agreement.

11. GenScript’s Cure Amount must be paid by the Debtors to GenScript in order for the Master Services Agreement to be assumed and assigned.

² Any capitalized terms used herein not otherwise defined shall have the meanings ascribed to them in the Cure Notice.

RESERVATION OF RIGHTS

12. GenScript reserves the right to amend its GenScript Cure Amount for other amounts which may be or become due (“Adjustment Amounts”) and to supplement this Objection and further reserves all other rights and remedies it may have under applicable law.

CONCLUSION

WHEREFORE, GenScript respectfully requests the entry of a Court Order which provides: (i) that in the event that the Master Services Agreement is subject to assumption and assignment, the Debtors shall be ordered to immediately pay to GenScript the full GenScript Cure Amount; (ii) that all rights are reserved regarding any hearing to review the objection, including adequate assurance of future performance; and (iii) for such other and further relief as the Court deems equitable, just and proper under the circumstances.

Respectfully submitted,

Dated: June 6, 2023

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Counsel for GenScript Probio USA, Inc.

CERTIFICATION OF SERVICE

The undersigned certifies that on **June 6, 2023**, a true and correct copy of the foregoing document was served on all parties receiving notice via the Court's CM/ECF system and the Objection Notice Parties listed as follows: (a) counsel to the Debtors, Pachulski Stang Ziehl & Jones LLP, 440 Louisiana Ave., Suite 900, Houston, Texas, 77002, Attn: Michael D. Warner (mwarner@pszjlaw.com) and 10100 Santa Monica Blvd., Suite 1300, Los Angeles, California 90067, Attn: Richard M. Pachulski (rpachulski@pszjlaw.com), Debra I. Grassgreen (dgrassgreen@pszjlaw.com), and Shirley S. Cho (scho@pszjlaw.com); (ii) counsel to the Agent, Sullivan & Cromwell LLP, Attn: Ari B. Blaut (blauta@sullcrom.com), Daniel R. Loeser (loeserd@sullcrom.com), Benjamin S. Beller (bellerb@sullcrom.com), Mark E. Dendinger (mark.dendinger@bracewell.com), Jonathan Lozano (jonathan.lozano@bracewell.com); (iii) counsel to the Prevailing Purchaser, if one has been determined³; (iv) proposed counsel to the Committee, (a) McKool Smith PC, 600 Travis Street, Suite 7000, Houston, TX 77002, Attn: John J. Sparacino (jsparacino@mckoolsmith.com) and S. Margie Venus (mvenus@mckoolsmith.com); and (b) Porzio, Bromberg & Newman, P.C., 100 Southgate Parkway, P.O. Box 1997, Morristown, NJ 07962-1997, Attn: Warren J. Martin, Jr. (WJMartin@pbnlaw.com), Robert M. Schechter (RMSchechter@pbnlaw.com) and Rachel A. Parisi (RAParisi@pbnlaw.com); (v) counsel to the Stalking Horse Bidder(s), if any⁴; and (vi) the United States Trustee at the Office of the United States Trustee, 515 Rusk St, #3516, Houston, Texas, 77002, (Attn: Jana Smith Whitworth (Jana.Whitworth@usdoj.gov) and Ha Nguyen (Ha.Nguyen@usdoj.gov)).

³ Information is not yet available at the time of filing.

⁴ Information is not yet available at the time of filing.

Dated: June 6, 2023

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EXHIBIT “A”
(Schedule of Cure Amount)

GensScript's Schedule of
Cure Amount

Order No	Group	Order Type	Order Confirm Date	Order Amount	Payment received	Cure Amount	Order Production Status
U8371HK010	Probio	SERVICE - BDBU GCT Service	11/4/2022	170.00		170.00	Work Delivered
U0411IA180	Probio	SERVICE - BDBU GCT Service	1/20/2023	8,950.00		8,950.00	Work Delivered
U550AHC070	Probio	SERVICE - BDBU GCT Service	3/9/2022	29,000.00		29,000.00	Work Delivered
U2311HK080	Probio	SERVICE - BDBU GCT Service	11/16/2022	30,341.10		30,341.10	Work Delivered
U9573HA260	Probio	SERVICE - BDBU PAD Service	6/10/2022	1,156,899.00	378,225.00	778,674.00	In progress but already holdoff
U627JGJ050	Probio	SERVICE - BDBU GCT Service	10/10/2021	30,000.00		30,000.00	In progress but already holdoff
U076UJH260	Probio	SERVICE - BDBU PAD Service	11/5/2022	352,236.77		352,236.77	In progress but already holdoff
U6513HI220	Probio	SERVICE - BDBU GCT Service	12/16/2022	188,000.00	40,500.00	147,500.00	In progress but already holdoff
U3061301G0	Probio	SERVICE - BDBU GCT Service	4/4/2023	54,767.00	-	54,767.00	Not started
				1,850,363.87	418,725.00	1,431,638.87	
		Cure Amount: \$1,431,638.87					
		(net of progress payments)					